Medicaid Home-and-Community-Based Waiver Programs in New York State

Medicaid home and community-based services [HCBS] are available through waiver programs to groups of individuals who would be eligible for Medicaid if institutionalized and, but for the services, would be institutionalized in a hospital or nursing facility. Under section 1915(c) of the Social Security Act, the federal government grants waivers of requirements that are otherwise applicable to Medicaid "state plan" services.

Congress enacted section 1915(c) of the Social Security Act in the Omnibus Reconciliation Act (OBRA) of 1981. Until then, comprehensive long-term care services through Medicaid were available only in institutional settings. Although mandatory home health services and optional personal care services were available as Medicaid benefits before OBRA 1981, states had largely restricted their use and limited the amount of services - New York being an exception with its personal care program and the Lombardi or Long Term Home Health Care Program (LTHHCP), which was established by Chapter 895 of the New York Laws of 1977. In fact, Congress reportedly modeled 1915(c) waivers in part on New York's experience with the Lombardi program.

In waiver programs, CMS waives key requirements that apply to Medicaid "state plan" services - those provided to all Medicaid recipients in the state. State plan services are either "mandatory" or "optional," meaning that a State may elect to include them in the state plan. Once elected by a state, an optional service must still comply with all of the federal requirements. For a waiver, however, waivers of the "statewideness" or "comparability" requirements of federal Medicaid law allow states to create waiver programs that target only a particular population -- limited by age, diagnosis, or geographic area of the state, or that limit the number of waiver slots available. Waiver of the financial eligibility requirements allow states to include individuals who would normally not meet Medicaid's income/resource guidelines.

Waivers have grown nationally with the momentum to "rebalance" long term care services from institutional care to care in the communities. However, they are not the only Medicaid home care services -- Medicaid programs offer "state plan" services which are part of the state's statewide Medicaid plan, offered to all people of all ages and diagnoses in the state, if eligible. Unlike waiver services, state plan services may not have a waiting list. New York State has long led the nation in these two state plan services: personal care (also known as home attendant services in NYC) and certified home health care program (CHHA) services.

This training outline by Selfhelp Community Services provides background, with statutory and regulatory references, about the various Home and Community Based Waiver Programs in New York State. A Table of Contents is set forth below.

Related Links and Documents on Waivers in New York
Note that many of these waivers have been or will be in 2015 or later "carved into" Medicaid managed care, so that managed care plans will be required to provide the waiver services to members who qualify. Advocates are raising concerns that plans lack the expertise and resources to provide these niche services to vulnerable members.

1. Long Term Home Health Care Program (Lombardi/ LTHHCP, includes AIDS LTHHCP)
2. Traumatic Brain Injury (TBI) waiver
3. Nursing Home Transition & Diversion waiver
4. OPWDD waivers
5. Care at Home waivers for children with physical disabilities
6. OMH Waiver for Children and Adolescents with Serious Emotional Disturbance
7. Bridges 2 Health (behavioral health
8. Community First Choice and other New Federal Options for Waivers

Background on Waivers - Federal Law Requirements and Trends - See Cynthia Shirk, Rebalancing Long Term Care: The Role of the Medicaid HCBS Waiver Program, Georgetown University National Health Policy Forum, 2006

GIS 07 MA/018  (elimination of transfer penalty in all waiver programs)

1. Long Term Home Health Care Program (Lombardi/ LTHHCP, includes AIDS LTHHCP)

   • GIS 16 MA/011 - Closing the Long Term Home Health Care Program (LTHHCP) PDF
   • As of April 1, 2013, this program is no longer an alternative to Managed Long Term Care for "dual eligibles" (have Medicare and Medicaid) adults age 21+ who need Medicaid home care services in New York City and other counties in which enrollment in MLTC is otherwise mandatory for this population. The State has received approval from CMS to require all LTHHCP/Lombardi recipients in mandatory counties to enroll in MLTC plans. Additionally, those who are not dual eligibles and who are subject to mandatory enrollment in mainstream Medicaid managed care must enroll in those plans to receive home care services, and leave the Lombardi program. See MICSA Alert from NYC HRA regarding this mandatory transition.
   • Approval Letter for LTHHCP Waiver Amendment
   • Approval Letter to amend Partnership Plan and F-SHRP
   • NYS Dept. of Health LTHHCP Reference Manual (REVISED May 2012)
   • Statewide Directory of Long Term Home Health Care programs in each county (plus hospices, CHHAs, LHCSAs)
   • 02 OMM/ADM-4 (May 28, 2002)(Notice and Fair Hearing Procedures for the LTHHCP);
   • 11-LTC-ADM-01 - Long Term Home Health Care Program Waiver Renewal (continuation of spousal protections, some new services within waiver)(April 26,
ADM clarifies obligation to do **discharge planning** before discontinuing services. "If services can not be maintained within the budget after alternatives are considered, participants must be informed and referred to other options for care as necessary. This may include the range of existing State Plan home care services, other available 1915c waivers such as the Nursing Home Transition and Diversion waiver, and Managed Long Term Care."

The regulations also require discharge planning. 18 NYCRR 360-2.6 requires that "the district must inform the recipient of available assistance and services, and help the recipient in obtaining them." SEE FH decision #5953201Z on OTDA FH archive.

- **Long Term Home Health (Lombardi) Program Complaint Process**
- **Financial Budgeting Rules for Lombardi/LTHHCP, Transfers of Assets & Spousal Protections** - For married couples, the rules on income and assets are different than in "community" Medicaid used for most people living in their homes, AND different than "institutional budgeting" for people in nursing homes and their spouses.

  - As in "community Medicaid," there is no penalty on transferring assets for this program -- See GIS 07 MA/018 (elimination of transfer penalty in all waiver programs)
  - Married couples get the benefit of **Spousal Impoverishment Protections** very similar to those used in nursing homes to allow a "community spouse" to retain the couple's income and assets. See- GIS 10 OLTC/003 Long Term Home Health Care Program (LTHHCP) Waiver Extension (May 3, 2010).

    - However, the spouse receiving LTHHCP services may only retain a monthly "Personal Needs Allowance" (PNA) that is the difference between the Medicaid income level for a household of one and the Medicaid income level for a household of two. In 2013, that is $375/month. Evans v. Wing, 277 A.D.2d 903, 716 N.Y.S.2d 269 (4th Dept. 2000), reargument denied, 724 N.Y.S.2d 143 (4th Dept. 2001). NYS DOH GIS 01-MA-021 (June 28, 2001).

2. **Traumatic Brain Injury (TBI) Waiver**

   - **NOTE:** The mandatory transition of this waiver to Managed Long Term Care and managed care has been postponed to **April 1, 2018** (announced Feb. 2017). Unless
postponed, effective April. 2016, services in thus waiver for participants who do not have Medicare will be required to join Medicaid managed care plans and receive TBI waiver services through the plans. Assembly bill A07598/ S.5535 - proposes delaying the transition of TBI and NHTD waiver populations to managed care until a work group develops a transition plan - for info contact Traci Allen. See more here. See DOH Webpage on Transition of NHTD and TBI waivers to MLTC and managed care

- NYS DOH Request for Proposals, Housing Payment Services for Traumatic Brain Injury Waiver Participants, March 1, 2010

- Traumatic Brain Injury Frequently Asked Questions (DOH)
- Home and Community Support Services (HCSS) Letter (Apr. 29, 2009, requiring providers of Home and Community Support Services (HCSS) in the waiver to be licensed home care services agency (LHCSA)
- GIS 07 MA/018 (elimination of transfer penalty in all waiver programs)
- GIS 12 MA/013 - reinstates spousal impoverishment protections in the Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs, in addition to Lombardi (thus repealing NYS DOH GIS 08-MA-024, Aug. 26,2008 which eliminated spousal protections in TBI and NHTDW waivers). See more at Spousal Impoverishment Protections Available in All 1915 Waiver Programs
- TBI Waiver Complaint Process

3. New York State Transition & Diversion Waiver (NHTDW)

- NHTDW Program Manual and DOH webpage on NHTDW
- NOTE: The mandatory transition of this waiver to Managed Long Term Care and managed care has been postponed to April 1, 2018 (announced Feb. 2017). Participants who do not have Medicare will be required to join Medicaid managed care plans and receive TBI waiver services through the plans. Those with Medicare will be transitioned to MLTC. Assembly bill A07598/ S.5535 - proposes delaying the transition of TBI and NHTD waiver populations to managed care plans. For info contact Traci Allen. See more here.

- See DOH Webpage on Transition of NHTD and TBI waivers to MLTC and managed care
- Application for a §1915(c) Home and Community-Based Services Waiver (Revised)
- GIS 07 MA/018 (elimination of transfer penalty in all waiver programs)
- GIS 12 MA/013 - establishes spousal impoverishment protections in the Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs, in addition to Lombardi. See more at Spousal Impoverishment Protections Available in All 1915 Waiver Programs
- NHTDW Waiver Complaint Process and Contacts
- State info on Housing Subsidy in NHTD
- Info from local contractors providing NHTDW: Access Home Care // Center for
4. **Home and Community-Based Services Waiver- administered by OPWDD- Office for People with Developmental Disabilities (formerly OMRDD)**

- THE HCBS WAIVER IS BEING OVERHAULED INTO THE "People First Waiver" - See this webpage for developments, including videos, message boards, sign up for e-mail information, monthly updates, etc.
- The NYS DOH webpage provides a brief description of the HCBS Waiver and which individuals can apply to enroll.
- To enroll in the HCBS Waiver, contact the Eligibility Coordinator at the Developmental Disabilities Regional Office that covers the county where the individual lives or search for a provider agency that provides "service coordination" in the county where the individual lives by using the OPWDD Provider Directory.
- GIS 07 MA/018 explains that there is no transfer penalty, or "look-back" period, for HCBS Waiver applicants.

***NOTE:*** Individuals who have Medicaid do not need to be enrolled in the HCBS Waiver in order to receive OPWDD services, however OPWDD does need to determine them "eligible" for OPWDD services. The eligibility review process starts at one of OPWDD's five Developmental Disability Regional Offices (DDROs). Each DDRO provides services to a specific county or group of counties. Certain documents, including reports from assessments conducted by qualified practitioners to support a qualifying diagnosis of "developmental disability," must be submitted to the DDRO to receive an eligibility determination, and an individual must be given notice and appeal rights.

- FAQs about the OPWDD eligibility process can be found on the OPWDD website.
- OPWDD provides both community and residence based services that are furthered explained on the OPWDD website. Service providers can be found by using the OPWDD Provider Directory.
- For information on eligibility and applying for services, contact the Eligibility Coordinator at the Developmental Disabilities Regional Office that covers the county where the individual lives or search for a provider agency that provides "service coordination" in the county where the individual lives by using the OPWDD Provider Directory.

5. **Care at Home for Children with Physical Disabilities - Levels I & II**

- Resource Directory for Children and Young Adults with Special Needs (DOH website)
- NYS DOH GIS 12 MA031 - Consolidation of Care at Home (CAH) III, IV and VI model waivers into a new 1915(c) waiver known as the OPWDD Care at Home WaiverPDF (PDF, 11KB, 1pg)
- NYS DOH Resource Directory for Children and Young Adults with Special Health Care Needs - descriptions of state programs and services and eligibility criteria
• Care at Home Medicaid Waiver for Developmentally Disabled Children (Office for People with Developmental Disabilities [OPWDD])
• Care at Home (CAH I/II) Program for Physically Disabled Children

• Children's Home & Community Based Services Manual
• Care at Home Case Management Waiver Program for Children - state directives in http://www.health.state.ny.us/health_care/medicaid/publications/index.htm

♦ GIS 15 MA/016 - LDSS-639 Disability Team Review Certificate and the Care at Home Waivers III, IV and VI PDF
♦ GIS 15 MA/002 - Care at Home III, IV and VI Waivers: Policy Updates Regarding Waiver Eligibility
♦ GIS 15 MA/018 - Care At Home I/II Waiver Renewal
♦ 12MA031 - Consolidation of Care at Home (CAH) III, IV and VI model waivers into a new 1915(c) waiver known as the OPWDD Care at Home Waiver
♦ GIS 09 OLTC/004 (April 2009);
♦ GIS 10 OLTC/002 (palliative care now available),
♦ 90-ADM-20 (May 30, 1990); 92 LCM 170 --
• DOH - Care At Home: A Manual for Parents (Currently under revision)
• NYC HRA Leaflet on Care at Home Program
• Care at Home Program Complaint Process

6. OMH Waiver for Children and Adolescents with Serious Emotional Disturbance

• State website and here

7. Bridges to Health (B2H) Waiver

• B2H Program Manual (July 2009)
• B2H eligibility and info- NYS DOH website
• List of B2H Integration Agencies
• NYC pamphlets and info

8. Community First Choice and other New Federal Options for Waivers

• Gene Coffey,
The-Medicaid-Long-Term-Services-And-Supports-Provisions-In-The-Senate's-Patient-Protection
National Senior Citizens Law Center, January 2010
• Community First Choices Option in NYS (Leah Farrell, CDRNYS)
• Leading Age info on Community First Choice

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Training Outline on Waivers in New York State by Selfhelp Community Services

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- Community First Choice Option, PPACA § 2401, Recon. Act § 1205.
- Removal of Barriers to Providing HCBS services, PPACA § 2402.
- Expansion of State Plan 1915-i Option to Provide HCBS Services.
- Money Follows the Person Rebalancing Demonstration, PPACA § 2403.
- State Balancing Incentive Program (Sec 10202 PPACA).

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Article ID: 129
Last updated: 22 Feb, 2017
Revision: 27
Medicaid -> Home Care -> Medicaid Home-and-Community-Based Waiver Programs in New York State
http://www.wnylc.com/health/entry/129/